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COUNTY OF SANTA BARBARA and
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUNAN CHEN, KELLY YAO
WANG, CHANGSHUANG WANG,
JINSHUANG LIU, LICHU CHEN,
and WENQUEI HONG,

Plaintiffs,

v.

COUNTY OF SANTA BARBARA;
SANTA BARBARA COUNTY
SHERIFF'S DEPARTMENT; CAPRI
APARTMENTS AT ISLA VISTA;
ASSET CAMPUS HOUSING; and
DOES 1 through 200, Inclusive

Defendants.

Case No: CV 15-1509-JFW (JEMx)

**DEFENDANTS COUNTY OF
SANTA BARBARA AND SANTA
BARBARA COUNTY SHERIFF'S
DEPARTMENT'S MOTION TO
DISMISS COMPLAINT ([FRCP
12\(b\)\(6\)](#))**

[Filed concurrently with Proposed
Order]

Judge: Hon. John F. Walter
Courtroom: 16 – Spring Street
Date of Hearing: June 8, 2015

TO THE PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on June 8, 2015, at 1:30 p.m., or as soon
thereafter as the matter may be heard in Courtroom 16 of the above entitled
court, located at 312 N. Spring St., Los Angeles, CA., defendants County of
Santa Barbara and Santa Barbara County Sheriff's Department will move this
court to dismiss each cause of action from plaintiffs' Complaint pursuant to [Rule
12\(b\)\(6\)](#) on the following grounds:

COUNTY DEFENDANTS' MOTION TO DISMISS [FRCP 12(b)(6)]

1. Plaintiffs' Complaint does not state a claim on which relief can be granted for denial of due process.

This motion is made following the conference of counsel pursuant to Central District Local Rule 7-3, which took place on March 16, 2015.

This motion will be based upon this Notice, the within memorandum of points and authorities, the pleadings on file herein, and such other matters as may be presented at the hearing of this motion.

Dated: May 3, 2015

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: /s/
Lisa A. Rothstein
Senior Deputy County Counsel
Attorneys for Defendants
COUNTY OF SANTA BARBARA and
SANTA BARBARA COUNTY SHERIFF'S
DEPARTMENT

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1 **TABLE OF AUTHORITIES**

2 **FEDERAL CASES**

3

4 *Bell Atlantic Corp. v. Twombly*,

5 [127 S. Ct. 1955 \(2007\)](#)4

6 *Clegg v. Cult Awareness Network*,

7 [18 F.3d 752 \(9th Cir. 1994\)](#)4

8 *DeShaney v. Winnebago County Dept. of Social Serv.*,

9 [489 U.S. 189 \(1989\)](#)5

10 *Jenkins v. McKeithen*,

11 [395 U.S. 411 \(1969\)](#)4

12 *Johnson v. Knowles*,

13 [113 F.3d 1114\(9th Cir.\)](#) (citation omitted),.....4

14 *Kennedy v. City of Ridgefield*,

15 [439 F.3d 1055 \(9th Cir. 2006\)](#) 1, 5, 6

16 *Munger v. City of Glasgow*,

17 [227 F.3d 1082 \(9th Cir. 2000\)](#)6

18 *Patel v. Kent School Dist.*,

19 [648 F.3d 965 \(9th Cir. 2011\)](#)5, 8

20 *Wood v. Ostrander*,

21 [879 F.2d 583 \(9th Cir. 1989\)](#)6

22 **FEDERAL RULES**

23 [FRCP 12\(b\)\(6\)](#)i

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26

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 I.
3 INTRODUCTION

4 This tragic event has been heavily reported in the news. Elliot Rodger
5 was a dysfunctional, lonely young man who took revenge for his unhappiness
6 through a deadly rampage in Isla Vista, California, where he killed three people,
7 and injured another fourteen. The tragedy is undeniable. The liability, however,
8 is not with these defendants.

9 Plaintiffs Junan Chen, Kelly Yao Wang, Changshuang Wang, Jinshuang
10 Liu, Lichu Chen, and Wenquei Hong are the parents of three victims of
11 Rodger's killing spree. They sue the Santa Barbara Sheriff's Department
12 asserting that when several Deputies made a wellness call on Rodger several
13 weeks before the incident, they should have realized the risk he posed and done
14 something to change the course of what occurred.¹ As discussed below, case
15 law limits Fourteenth Amendment liability in this type of case, where the
16 plaintiffs were harmed by a third party and not by the government. "The state's
17 failure to protect an individual against private violence does not generally
18 violate the guarantee of due process." [*Kennedy v. City of Ridgefield* 439 F.3d](#)
19 [1055, 1061 \(9th Cir. 2006\)](#).

20 Plaintiffs attempt to plead into an exception to the general rule of non-
21 liability. Under the "state-created danger" doctrine, the government can be
22 liable for harm caused by third parties if state action affirmatively placed the
23 plaintiff in a position of danger; that is, where state action creates or exposes an
24 individual to a danger which he or she would not have otherwise faced.
25 Plaintiffs assert that by failing to recognize Rodger's threat when they were

26
27 ¹ Plaintiffs also sue Capri Apartments at Isla Vista and Asset Campus Housing,
28 alleging negligence in placing the decedents as Rodger's roommates.

1 dispatched to check on his welfare, the defendants somehow exacerbated the
2 threat that he posed. As set forth below, these bare allegations are insufficient to
3 support a Fourteenth Amendment Claim.

4 II. 5 FACTUAL SUMMARY

6 The Complaint contains a summary of Rodger's life in the couple of years
7 preceding his rampage. As it relates to the allegations against the Santa Barbara
8 County Sheriff's Department, plaintiffs allege that Rodger moved to the Capri
9 apartments in Isla Vista in June 2011 to attend City College. (Complaint, p.
10 5:10-15.) Capri management paired Rodger with multiple roommates, most of
11 whom Rodger had problems with, because of his racist attitude, feelings of
12 inferiority, or other psychological problems. (Complaint, p.5:16-28.)

13 Rodger became more miserable as time went on and his fortunes didn't
14 change for the better. (Complaint, p. 6:6-12.) In late 2012, Rodgers parents
15 arranged for him to begin seeing a psychiatrist. (Complaint, p. 6:23-24.) Around
16 the same time, he began planning his "Day of Retribution," when he would
17 massacre young people on the streets of Isla Vista to take revenge for the fact
18 that they were happy and he was not. (Complaint, p. 7:1-6.) He wrote, "It would
19 be a day in which I exact my ultimate retribution and revenge ... I will arm
20 myself with deadly weapons and wage a war against all women and the men
21 they are attracted to. And I will slaughter them like the animals they are."
22 (Complaint, p. 7:1-6.)

23 In December 2012, Rodger purchased a semiautomatic pistol, signing all
24 of the paperwork in his own name. (Complaint, p. 7:7-8.) His rage continued in
25 2013, when he posted racist and misogynistic comments on several different
26 websites and recorded videos of himself ranting on YouTube. In Spring 2013,
27 Rodger purchased another pistol and several boxes of ammunition. (Complaint,
28 p. 7:25-26.)

1 In July 2013, Rodger threatened some girls at a party in Isla Vista, and
2 some boys came to their defense. They pushed Rodger off a ledge, which broke
3 his ankle. His father took him to the hospital the following day and Rodger was
4 interviewed by Sheriff's Deputies. When other party-goers told the Deputies that
5 Rodger had been the aggressor, they did no further follow up or investigation.
6 (Complaint, p. 8:1-17.) After recuperating at his mother's house for several
7 weeks, he returned to Isla Vista in September, 2013. (Complaint, p. 8:18-20.)
8 Capri management paired him with new roommates, Cheun-Yuan Hong and
9 Weilan Wang, two of plaintiffs' decedents in this case. (Complaint, p. 8:20-22.)

10 In January 2014, Rodger became irritated at Hong and Wang because he
11 did not like the smell of their cooking. He began taking their cookware and
12 refused to return the items when his roommates confronted him. In response,
13 Hong took some candles and candleholders from Rodger. Rodger placed Hong
14 under citizens' arrest and called Sheriff's Department. Hong was arrested for
15 petty theft but not ultimately charged. (Complaint, p. 9:7-20.)

16 In early 2014, Rodger began making specific plans to carry out his "Day
17 of Retribution." He settled on May 23, 2014. (Complaint, p. 9:21-23.) In April
18 2014, Rodger uploaded more videos to YouTube, which revealed him to be
19 unstable and dangerous. (Complaint, p. 9:24-28.)

20 On April 30, 2014, Sheriff's Deputies went to Rodger's apartment after
21 getting a call from a mental health worker who saw Rodger's YouTube videos
22 and believed he might be a danger to himself or others. Nobody from the
23 Sheriff's Dept. watched the videos, performed a background check, or reviewed
24 Rodger's online postings. When they went to Rodger's apartment, the Deputies
25 did not request entry but only spoke with Rodger at the door. (Complaint, p.
26 10:1-9.) Rodger convinced the Deputies that it was a misunderstanding, and
27 they left the apartment without taking any action.
28

1 On May 23, 2014, Rodger killed Hong and Wang and their friend Junan
2 Chen, who was visiting, at their apartment. He then emailed his “manifesto” to
3 his parents, some friends, and his therapist before going out into Isla Vista,
4 where he carried out a shooting rampage that left three more people dead and
5 fourteen wounded.

6 On March 2, 2015, plaintiffs, the parents of decedents Hong, Wang and
7 Chen, filed this civil rights lawsuit, alleging that the Sheriff’s Department
8 violated their Fourteenth Amendment right to due process when the Deputies
9 failed to perform a background check or conduct a more thorough investigation
10 on Rodger in the course of their welfare check at Rodger’s apartment on April
11 30, 2014.

12 III. 13 STANDARD OF REVIEW

14 To state a claim for relief under section 1983, plaintiffs must plead facts
15 that if true, would constitute the deprivation by the defendants of a right secured
16 by the United States Constitution. [Johnson v. Knowles, 113 F.3d 1114,1117 \(9th](#)
17 [Cir.\)](#) (citation omitted), cert. denied, [522 U.S. 996 \(1997\)](#). “Factual allegations
18 must be enough to raise a right to relief above the speculative level.” [Bell](#)
19 [Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 \(2007\)](#).

20 In reviewing a complaint under this standard, the court must accept as true
21 the allegations of the complaint and construe the pleading in the light most
22 favorable to the plaintiff. [Jenkins v. McKeithen, 395 U.S. 411, 421 \(1969\)](#).
23 However, the “court is not required to accept legal conclusions cast in the form
24 of factual allegations if those conclusions cannot reasonably be drawn from the
25 facts alleged.” [Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 \(9th Cir.](#)
26 [1994\)](#) (citations omitted).

IV.
THE ALLEGATIONS DO NOT SUPPORT A CLAIM
THAT THE DEPUTIES ACTIONS PLACED PLAINTIFFS'
DECEDENTS IN DANGER

There is no dispute that the decedents died at the hands of Rodger, and not as a direct result of any action by the Sheriff's Department. Plaintiffs allege that nonetheless, the Sheriff's Department is liable here because it failed to reasonably investigate Rodger in conjunction with conducting a wellness check. (Complaint, p. 11:7-12:13.) Constitutional liability in this type of case, where the plaintiffs were harmed by a third party and not by the government, is narrowly restricted. "[T]he Due Process Clauses generally confer no affirmative right to governmental aid, even when such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." [*DeShaney v. Winnebago County Dept. of Social Serv.*, 489 U.S. 189, 196 \(1989\)](#). "The state's failure to protect an individual against private violence does not generally violate the guarantee of due process." [*Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 \(9th Cir. 2006\)](#). Stated another way, "the Fourteenth Amendment typically does not impose a duty on the state to protect individuals from third parties." [*Patel v. Kent School Dist.*, 648 F.3d 965, 974 \(9th Cir. 2011\)](#).

Here, plaintiffs allege facts intended to fit within an exception to the general rule of no government liability for harm caused by private parties. Under case law, the government *can* be liable under these circumstances if state action affirmatively placed the plaintiff in a position of danger; that is, "where state action creates or exposes an individual to a danger which he or she would not have otherwise faced." [*Kennedy, supra*, 439 F.3d at 1061](#). This state-created danger exception though, is narrowly construed. In order to state a claim under the state-created danger doctrine, plaintiff must establish that: (1) an affirmative action of the government placed the plaintiff in danger he would not otherwise

1 have faced; (2) the danger was known and obvious; and (3) the officer acted
2 with deliberate indifference to the known danger. [Kennedy, supra, 439 F.3d at](#)
3 [1062-64.](#)

4 Examples of circumstances in which Courts have found government
5 liability for harm directly caused by third parties include [Wood v. Ostrander,](#)
6 [879 F.2d 583 \(9th Cir. 1989\)](#) and [Munger v. City of Glasgow, 227 F.3d 1082](#)
7 [\(9th Cir. 2000\).](#) In [Wood](#), police officers arrested a drunk driver, took his keys,
8 and left his female passenger on the side of the road in a high crime area, where
9 she was subsequently raped. The Court held that the police had affirmatively
10 created the danger that befell the plaintiff and could be liable. [Id. at 589-590.](#) In
11 [Munger](#), police responded to a bartender's call for help with a disturbance. The
12 officers ejected the instigator from the bar in sub-freezing weather though he
13 was dressed in only jeans and t-shirt. He died that night of hypothermia. Again,
14 the Court held that these facts fit within the state-created danger doctrine
15 because law enforcement affirmatively placed the decedent in a position of
16 danger. [Id. at 1087.](#)

17 To state a claim then, plaintiffs must allege that the Sheriff's Deputies
18 took an affirmative action that placed the victims in greater danger than they
19 otherwise would have confronted, that the danger Rodger posed was known and
20 obvious, and that they acted with deliberate indifference when they failed to
21 further investigate. The Complaint does not adequately plead any of these three
22 elements. Rather, the allegations only support a claim that the Deputies failed to
23 stop Rodger from carrying out his already-planned "day of retribution."

24 A. Plaintiffs do not Allege an Affirmative Act that Caused Harm

25 To support the claim of an affirmative act, Plaintiffs allege, "[t]his failure
26 on the part of the SBCSD [to request to enter the apartment or search Rodger's
27 room] emboldened Rodger and caused him to adapt and expand his plans of
28

1 violence, creating greater danger than existed previously.” (Complaint, p. 10:9-
2 11.) Plaintiffs support this contention by quoting from Rodger’s “Manifesto”
3 where he states:

4 “[I]f they had demanded to search my room ... That would have
5 ended everything.... When they left, the biggest wave of relief
6 swept over me... This incident made me realize that I needed to be
extra careful. I can’t let anyone become suspicious of me...”

7 Complaint, p. 10:12-16. This statement does not support a claim of an
8 affirmative action that increased the decedents’ exposure to harm. It merely
9 indicates Rodger’s determination to carry out his plans and not be discovered.
10 Rodger does not express any intention to enlarge his plans, or widen his scope.
11 Any allegation that the officers’ visit had that impact is entirely conclusory and
12 not adequate to support a Fourteenth Amendment claim.

13 In addition, there is no contention in the Complaint (nor could there be)
14 that the officers had probable cause to search Rodger’s apartment. Without
15 probable cause, the most they could have done legally is request entry. There’s
16 no indication that Rodger would have allowed the officers to enter the
17 apartment. In fact, he writes that the Deputies would have thwarted his efforts if
18 they had “demanded to search my room,” not if they had “requested” to search
19 the room. Any allegation regarding whether Rodger would have consented to a
20 search of his apartment would be speculative and conclusory at best. For this
21 additional reason, the Complaint does not adequately support a contention that
22 the officers’ actions placed the decedents at greater risk.

23 B. Plaintiffs do not Allege that at the Time of the Wellness Check, Rodger
24 Posed a Known and Obvious Danger

25 Plaintiffs do not contend that Rodger posed a known and obvious danger
26 at the time the Deputies visited him on April 31, 2014. The Complaint contains
27 some detail about Rodger’s decline that includes an incident in which he broke
28 his ankle after an altercation at a party and a time that he made a citizen’s arrest

1 of his roommate for taking his candles. These incidents might indicate that
2 Rodger was hot-tempered, or vindictive, but there is nothing in the allegations
3 that, if proven, would support a contention that Rodger posed a known and
4 obvious danger. Rather, the Complaint suggests that while Rodger was
5 increasingly disturbed internally, he did not present that way to the Deputies that
6 came to his door on April 31.

7 C. There are Nothing But Conclusory Allegations that the Deputies Acted
8 with Deliberate Indifference

9 “Deliberate indifference is a ‘stringent standard of fault, requiring proof
10 that a municipal actor disregarded a known or obvious consequence of his
11 action.” [Patel v. Kent School Dist., supra, 648 F.3d at 974](#). “The state actor
12 must ‘recognize an unreasonable risk and actually intend to expose the plaintiff
13 to such risks without regard to the consequences to the plaintiff. *Ibid.* Again,
14 plaintiffs’ allegations are conclusory: “defendants recklessly and with deliberate
15 indifference created a dangerous condition by failing to reasonably investigate,
16 reasonably perform any background check, and reasonably investigate the online
17 postings of Rodger as part of conducting his ‘wellness check.’” (Complaint, p.
18 11:8-12.) There are no facts in the Complaint that would suggest an actual
19 intent by the Deputies to expose the plaintiffs’ decedents to risk. Rather, the
20 Complaint suggests a failure by the Deputies to discover facts that might have
21 given them cause for greater concern. This however, does not meet the standard
22 for deliberate indifference.

23 Because the Complaint does not in any substantive way allege that the
24 Deputies’ deliberate and intentional actions affirmatively placed the decedents
25 are risk, it does not state a claim under the Due Process Clause.

26 ///

27 ///

V. CONCLUSION

Plaintiffs' factual allegations support a claim that Rodger was disturbed and homicidal but they do not make out a claim under the Due Process Clause. There is nothing but speculative allegations that the Deputies actions increased any risk to the decedents or that Rodger posed a known and obvious danger when the Deputies visited him on April 31, 2014. Finally there is nothing but conclusory allegations that the Deputies were deliberately indifferent; that is, that they intended to cause defendants' harm. The events that transpired in Isla Vista in May 2014 were unconscionable. Nobody could fault these Plaintiffs from seeking retribution. However, law enforcement cannot be held liable for violence caused by private parties and the law significantly restricts government liability for harm that results. Rodger's actions here were not a result of a Due Process violation by the Sheriff's Department. The Sheriff's Department requests dismissal with prejudice.

Dated: May 3, 2015

MICHAEL C. GHIZZONI
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By: /s/
Lisa A. Rothstein
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COUNTY OF SANTA BARBARA and
SANTA BARBARA COUNTY SHERIFF'S
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